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FEDERAL RESERVE BOARD

A revised policy for supervising financial institutions that participate in the purchase and sale of loans guaranteed by the U.S. government was recently adopted by the FRB. The revised policy reminds financial institutions that premiums received in lieu of servicing fees, with respect to the selling and servicing bank, are to be amortized over the life of the loan; and that, with respect to the purchasing bank, the premiums paid over the face value of the note are not guaranteed and are not paid by the guaranteeing federal agency when the loans are prepaid or in default. For this reason, the FRB cautions banks against paying inappropriate or excessive premiums.

JUSTICE, DEPARTMENT OF

An agreement designed to improve the detection, investigation, and prosecution of bank fraud cases was recently signed by the Justice Department, the FBI, the OCC, the FHLBB, the FRB and the FDIC. According to Attorney General Edwin Meese, "The health of the nation's banking industry is essential to the health of the nation's economy. Bank fraud perpetrated by insiders, even directed toward relatively small banks, seriously undermines the confidence and trust that individuals and businesses place in the banking industry as a whole. That confidence and trust will diminish all the more if the public fails to perceive a comprehensive and active law enforcement presence in the industry. And interagency cooperation is vital to that lawful presence." A working group, begun in 1984 is responsible for the recently signed document which embodies proposals designed to overhaul and improve the federal law enforcement response to bank fraud cases. The agreement addresses issues such as procedure and conduct of criminal referrals, special handling of highly significant cases, development of more effective interagency cooperation, and a joint strategy in dealing with statutes that restrict the interagency flow of information. According to Mr. Meese, the working group has had productive results and will continue its periodic meetings, not only to monitor and implement the points of agreement, but also to constantly monitor the entire bank fraud area.

OFFICE OF MANAGEMENT AND BUDGET

Guidance clarifying certain provisions of OMB Circular A-50 regarding audit followup procedures used on federal grants and contracts has recently been issued by the Office of Management and Budget. It states, "When reaudits are called for, agency management should make decisions, if possible, on those recommendations that are not the subject of the reaudit." Additionally, the guidance reminds agencies that their audit followup systems provide appropriate tracking and controls to ensure that "prompt and appropriate decisions are made within six months, and corrective action is actually taken." Inspectors general and other audit officials are expected to review agency actions periodically and determine that corrective action has been taken.

SECURITIES AND EXCHANGE COMMISSION

Amendments to Regulation S-X will be among the subjects of a 4/16/85 SEC open meeting. The Commission will consider whether to issue a release proposing amendments to Rule 3A-02 of the Regulation concerning consolidated financial statements of the registrant and its subsidiaries. The meeting is scheduled to begin at 10:00 a.m. and will be held in the Commission Meeting Room, 450 5th St., N.W., Washington, D.C. For additional information please contact Dorothy Walker at 202/272-7343.

SUPREME COURT

The AICPA has recently requested the U.S. Supreme Court limit civil cases under RICO to suits against individuals who have been criminally convicted of the predicate offenses listed in the law. In filing its amicus curiae brief, the AICPA also asked the Court to impose a "competitive injury" standing requirement of RICO plaintiffs. Since RICO repeatedly refers to criminal acts as predicates for civil liability, the U.S. Court of Appeals for the Second Circuit "reasonably concluded" that the statute only provides a civil remedy against persons whose multiple prior convictions make it fair to treat them as part of "organized crime". According to the Institute, "Congress could not have intended to allow private litigants to invoke RICO without the kind of prosecutorial screening that was to be the essential mechanism for applying the statute to its intended target." The brief asserts that Congress intended treble damage liability as an additional sanction against those members of organized crime who had been identified by public prosecutors and convicted of racketeering offenses. Without the prior conviction requirement, RICO would create federal jurisdiction over, and treble damage awards for, virtually any kind of commercial or financial dispute. The AICPA asserts that any other interpretation of civil RICO would raise serious doubts as to its constitutionality since, under the U.S. Constitution, "the decision to lodge an accusation of crime is the exclusive province of responsible executive branch officials." In the opinion of the Institute, only the clearest statutory language or legislative history should lead the court to conclude that Congress intended to disregard this tradition. The AICPA makes clear in its brief that it does not believe that such a congressional intent exists in this case. The Court has scheduled opening arguments in Sedima v. Imrex Co., 84-648 for 4/17/85.

TREASURY, DEPARTMENT OF

Proposed and temporary regulations explaining new restrictions on wash sales of securities used in straddle positions and transactions involving mixed straddles will be the subject of a 5/2/85 IRS public hearing (see the Fed. Reg., p. 14256). Both sets of rules implement restrictions included in the 1984 tax act. The Act generally repealed the blanket exceptions from the straddle rules for exchange-traded stock options and several kinds of other interests in stock while imposing new controls on straddle transactions. The hearing is scheduled to begin at 10:00 a.m. in the IRS Auditorium, Washington, D.C. Comments and requests to testify are requested by 4/24/85. For additional information please contact Faye Easley at 202/566-3935.

Guidelines for making estimated tax payments by Foreign Sales Corporations (FSCs) were recently issued by the IRS (IR-85-35). Generally, a FSC will be subject to a penalty based on current interest rates, if it does not pay at least 90% of its yearly tax in quarterly installments. However, if a corporation fails to meet the 90% standard it may avoid the penalty if it paid sufficient tax computed by following IRS instructions for annualizing taxable income for periods prior to the quarterly payment due date. Until guidance is issued for "transfer pricing", the IRS has granted FSCs the use of special pricing information for figuring their payments. The transfer price charged a FSC by a related supplier, or the commission charged to the supplies by the FSC will be allowable pricing data. For additional information please contact the IRS Public Affairs Office at 202/566-4024.

SPECIAL: RECORDKEEPING RULES WITHDRAWN FROM IRS HEARING AGENDA; SUBJECT OF CONGRESSIONAL CONFERENCE

Proposed regulations concerning the adequate contemporaneous recordkeeping rules have been withdrawn from consideration at the 4/16-18/85 IRS hearings, due to recent legislative developments. The IRS public meeting will focus on proposals relating to the taxation of fringe benefits, the limitation on cost recovery deductions, ITCs for luxury automobiles, and the limitations on personal property use. The hearings are scheduled to begin at 10:00 a.m. in the IRS Auditorium, Washington, D.C.

In a related matter, on 4/3/85 the House and Senate passed legislation, HR 1869, repealing the recordkeeping requirements. The Senate measure would repeal the contemporaneous recordkeeping requirements for property such as vehicles and computers, but still require the property be deemed as "listed property" under tax code section 274. The House-passed version includes the same standard as the Senate bill but also requires written evidence corroborating the taxpayer's own statement. Additionally, in adopting the measure the Senate included an amendment substantially easing fringe benefit valuation requirements included in the 1984 tax act for the personal use of company cars. The amendment is expected to add $1 billion a year to the cost of repeal, which by itself would cost approximately $150 million annually. In approving HR 1869, the House included an amendment intended to offset the revenue loss from repeal by reducing the investment tax credit and depreciation benefits for luxury automobiles. The House and Senate are expected to go to conference on the measure during the week of 4/15/85.

SPECIAL: LEGISLATION DRAFTED TO REGULATE GOVERNMENT SECURITIES DEALERS

Legislation intended to expand the authority of the Municipal Securities Rulemaking Board has been drafted by House Energy and Commerce Committee Chairman John Dingell (D-MI). Co-sponsored by Rep. Timothy Wirth (D-CO), the proposal is aimed primarily at unsupervised government securities dealers. The Dingell-Wirth proposal would expand the MSRB's mandate to include responsibility for government securities transactions, including professional qualification rules for those who buy and sell government securities; an industry-wide registration of personnel engaged in the government securities business; uniform practice rules relating to the processing, clearance and settlement of transactions; and, rules of fair practice, which cover disclosures and business conduct. According to congressional sources, introduction of the legislation is expected the week of 4/15/85.

For additional information please contact Gina Rosasco or Nick Nichols at 202/872-8190.

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